In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1085

ELISHA COMBS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that a search warrant issued for the search of his father's premises, specifically including the house and all outbuildings and vehicles and any and all adjacent properties used by the father, was insufficient to cover the search of petitioner's Cadillac parked on a lot less than 75 feet from his father's residence.

Petitioner was charged in the United States District Court for the Eastern District of Kentucky with having illegally possessed a sawed-off shotgun; with the illegal possession of a firearm after being convicted of a felony; with having received, concealed, and stored stolen firearms which had been transported in interstate commerce, knowing them to have been stolen; and with having knowingly received, concealed,

and stored stolen goods and merchandise valued in excess of $5,000, in violation of 26 U.S.C. 5861(c) and (d), of 18 U.S.C. App. 1202(a) and 18 U.S.C. 922(j) and 2315.[1]

Prior to trial, petitioner moved to suppress evidence seized in a search, pursuant to a warrant, of the house of his father, Pearl Combs, and of petitioner's Cadillac parked nearby. The trial court, after a hearing, overruled the motion with regard to the search of the house but sustained the motion with regard to the car. The government appealed pursuant to 18 U.S.C. 3731, and the court of appeals reversed (Pet. App. 22–25).[2]

1. On October 13, 1970, pursuant to a request by the Newport, Kentucky, Police Department, the police chief of the city of Hazard, Kentucky, and three other officers went to the home of Pearl Combs to arrest his son, Raymond, for whom there was an outstanding arrest warrant (Tr. 19–20). When the officers arrived, Raymond, who was on the porch, went into the house. The officers went around the house and met Raymond's brother, Lester, who told them that Raymond was inside (Tr. 24–26, 146–149). Without objection, the officers entered the house to look for

[1] Another case involving the same petitioner was before the Court last term (408 U.S. 224). There the judgment affirming petitioner's conviction for possession of stolen whiskey was vacated and the case remanded for consideration of petitioner's standing to challenge the search and seizure of the whiskey. We are advised that the district court held that petitioner had no such standing, and his appeal is again before the Sixth Circuit.

[2] Pet. App. refers to petitioner's appendix; Tr. refers to transcript of the proceeding at the hearing on the motion to suppress.

Raymond; however, he had jumped off the porch and fled the scene. While inside the house the officers saw a large quantity of firearms and ammunition (Tr. 28–31). At the scene the officers also saw a Cadillac automobile in a parking area nearest the house. It had the spare tire in the back seat, was sitting low in the rear and bore a license tag from Campbell County, Kentucky, the county where Raymond lived (Tr. 85–86, 115).

The officers reported to the Newport police what had happened and found out that both Pearl Combs and petitioner had been previously convicted of a felony (Tr. 98–99, 114–115). Thereafter, the Hazard Police Chief obtained a search warrant upon an affidavit before a United States Commissioner authorizing the search of Pearl Combs' house and premises, specifically including any and all out-buildings and vehicles found thereon. It also authorized the search of any adjacent properties used by Pearl Combs (Pet. App. 27–29). Armed with the search warrant, the police returned to the house, conducted a search, and seized forty-eight firearms and more than 500 rounds of ammunition (see Tr. 107–108; and Inventory of Firearms seized from residence of Pearl Combs). The officers then proceeded to the parking location adjacent to the Combs residence. Although it was stated by a member of the Combs family that the parking area belonged to a neighbor, it was the location where the family generally parked their cars (Tr. 146–148). The Police Chief said he did not know who owned the lot but it was "right there close to the house where the whole family parks their cars"

(Tr. 101). At the time three family vehicles (including petitioner's Cadillac) were found on the lot and searched. The officers did not search any vehicle that did not belong to the Combs family (Tr. 134).

When the officers went to the Cadillac, it could be seen that the spare tire was still in the back seat and the rear remained low (Tr. 131–132). Petitioner was present at the time of the search of his car. He gave the officers the key to the ignition but denied that he had a key to the trunk. Petitioner was then told that the trunk would have to be forced open; when the police began to do so, petitioner slipped away, not to be seen again that day (Tr. 102–103, 132–133).

When the trunk was opened a large quantity of firearms and other merchandise was observed. Some were taken out and then replaced. Because it was dark, the automobile was driven to Hazard, where the officers could see, and an inventory was taken of the goods in the trunk (Tr. 102–106). A sawed-off shotgun, twenty-seven other firearms, a quantity of ammunition, typewriters, radios, cameras and blankets were found and seized (Tr. 126; and see Inventory of Firearms seized from petitioner's automobile). Later, upon a further search, several diamond rings were also found in the trunk (Tr. 109–110). The vehicle has since been the subject of a forfeiture action under 26 U.S.C. 7301, 7302, 7321 (Tr. 127).

2. Petitioner concedes here that "the warrant is admittedly valid" (Pet. 11), and that pursuant to the warrant it was "constitutionally proper for the searching officers to search any motor vehicle situated on the premises" (Pet. 14). Petitioner, however,

alleges that the search of petitioner's vehicle was improper because, though parked in an adjacent area "close to the house" (Tr. 101), it was on property owned by another. We submit that the court of appeals properly rejected the technical challenge to the search of an automobile belonging to a convicted felon, parked in an area adjacent to his family's house, where the law enforcement officers had just located an "arsenal" of weapons (Pet. App. 25).

a. The record supports the holding of the court of appeals that the warrant sufficiently covered the search of the car and that the information in the affidavit supplied to the Commissioner was adequate to support its breadth. The affidavit for the search warrant clearly stated that the affiant was positive that there were illegal firearms and ammunition concealed upon the premises. The premises were fully described as being the dwelling of Pearl Combs and "all outbuildings and vehicles thereon. * * * including any and all adjacent properties used by the said Pearl Combs." As the court below noted, the arsenal of weapons observed in the house could hardly have been brought to the remote location where the house was located by any means other than by automobile; under these circumstances it was permissible for the Commissioner to infer probable cause to believe that the vehicles on the premises contained weapons also.

Describing the premises as the dwelling of Pearl Combs and "all outbuildings and vehicles thereon. * * * including any and all adjacent properties used by the said Pearl Combs", did not, as petitioner claims, authorize a search of the entire neighborhood, nor did it render

the warrant unconstitutionally vague. Affidavits and warrants are to be interpreted in a common-sense manner. See *United States* v. *Ventresca,* 380 U.S. 102; *United States* v. *Harris,* 403 U.S. 573. Such a description in the affidavit and warrant describes no more than what is commonly referred to as curtilage (*i.e.,* those places which would be included within the scope of the warrant even if they had not been specifically described therein), which includes all places in close proximity to a dwelling necessary and convenient to the dwelling, and habitually used for family purposes. See, *e.g., United States* v. *Potts,* 297 F. 2d 324 (C.A. 6); *Fine* v. *United States,* 207 F. 2d 324 (C.A. 6).

While the lot where petitioner's Cadillac was found may not have been owned by Pearl Combs, it was the nearest parking area to the Combs residence, it was regularly used by the Combs family for the purpose of parking their vehicles, and three family cars were parked there at the time of the search. In these circumstances the lot as well as petitioner's car were, for practical purposes, part of the premises subject to search under the warrant.

b. In any event, petitioner does not deny that there was probable cause to believe his car contained contraband at the time it was searched.[3] Thus, whether or

[3] The fact that the officers discovered the multitude of weapons in Combs' house, the discovery of the spare tire in the back seat, the low rear end of the automobile, the assertion of Elisha Combs that he did not have the trunk key to an almost new Cadillac, and the disappearance of Elisha Combs at the time the police asserted they were going to force open the trunk, presented sufficient probable cause for the officers to search the vehicle at that time.

not the warrant was broad enough to cover the car, the officers acted reasonably in searching the car promptly and impounding it for an inventory. See *Chambers* v. *Maroney,* 399 U.S. 42, 46–52. Unlike the situation in *Coolidge* v. *New Hampshire,* 403 U.S. 443, where four Justices concluded that a warrant should have been secured before the automobile was searched, the car in this case had not been immobilized by arresting its owner and by preventing any one else from driving it away. Thus, under the traditional exception to the warrant requirement, the search here, based on ample probable cause, was valid irrespective of the scope of the warrant for Pearl Combs' premises.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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